

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 BRETT COMBS,
10 Petitioner,
11 vs.
12 STATE OF NEVADA, et al.,
13 Respondents.

Case No. 2:11-cv-00528-GMN-VCF

ORDER

14
15 On September 19, 2017, the court entered an order (ECF No. 87) finding that petitioner had
16 not exhausted his state-court remedies for grounds 1.1, 1.4 through 1.14, 1.16 through 1.20, 2
17 through 4, 6, and 9 through 11 of the amended petition; the court instructed petitioner to inform the
18 court what he wanted to do. The court received no response from petitioner in the allotted time, and
19 the court dismissed the action on November 13, 2017 (ECF No. 88).

20 Petitioner retained counsel, and he filed a motion for relief from judgment (ECF No. 94) on
21 December 28, 2017. He argues that the court should grant relief based upon Rule 60(b)(1) of the
22 Federal Rules of Civil Procedure because prison officials never delivered the court's order of
23 September 19, 2017, to him. Consequently, he did not know that the court had ruled upon the
24 motion to dismiss and that he needed to decide what to do with the unexhausted grounds. Petitioner
25 then argues that prison officials did deliver the court's order and judgment of November 13, 2017,
26 and he retained counsel to help him. Respondents response (ECF No. 99) indicates that they do not
27 oppose the motion.

28

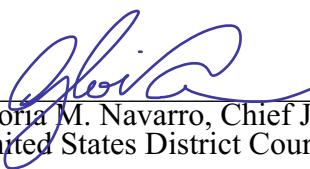
1 IT IS THEREFORE ORDERED that petitioner's motion for relief from judgment (ECF No.
2 94) is **GRANTED**. The order (ECF No. 88) and judgment (ECF No. 89) dismissing this action are
3 **VACATED**, and this action is **REINSTATED**.

4 IT IS FURTHER ORDERED that petitioner shall have thirty (30) days from the date of entry
5 of this order to do one of the following: (1) inform this court in a sworn declaration that he wishes
6 to dismiss grounds 1.1, 1.4 through 1.14, 1.16 through 1.20, 2 through 4, 6, and 9 through 11 of his
7 amended petition (ECF No. 23), and proceed only on the remaining grounds for relief, (2) inform
8 this court in a sworn declaration that he wishes to dismiss his amended petition (ECF No. 23) to
9 return to state court to exhaust his state remedies with respect to the claims set out in grounds 1.1,
10 1.4 through 1.14, 1.16 through 1.20, 2 through 4, 6, and 9 through 11 of his amended petition (ECF
11 No. 23), or (3) move to stay this action while he returns to state court to exhaust his state remedies
12 with respect to the claims set out in grounds 1.1, 1.4 through 1.14, 1.16 through 1.20, 2 through 4, 6,
13 and 9 through 11 of his amended petition (ECF No. 23). Failure to comply will result in the
14 dismissal of this action.

15 IT IS FURTHER ORDERED that if petitioner elects to dismiss the aforementioned grounds
16 of his amended petition (ECF No. 23) and proceed on the remaining grounds, respondents shall file
17 and serve an answer, which must comply with Rule 5 of the Rules Governing Section 2254 Cases in
18 the United States District Courts, within forty-five (45) days after petitioner serves his declaration
19 dismissing those grounds. Petitioner shall have forty-five (45) days from the date on which the
20 answer is served to file and serve a reply.

21 DATED: [April 4, 2018](#)

22
23
24
25
26
27
28


Gloria M. Navarro, Chief Judge
United States District Court